

H.R.1006

Secondary Metal Theft Prevention Act of 2009 (Introduced in House)
HR 1006 IH

111th CONGRESS
1st Session
H. R. 1006

To require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 11, 2009

Mr. STUPAK (for himself, Mr. TERRY, and Mr. PAULSEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the `Secondary Metal Theft Prevention Act of 2009'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Sense of the Congress.

Sec. 4. Purposes.

Sec. 5. Purchase transaction requirements.

Sec. 6. Protection of personal information.

Sec. 7. Enforcement by Federal Trade Commission.

Sec. 8. Enforcement by State Attorneys General.

Sec. 9. Civil penalty.

Sec. 10. State and local law not preempted.

Sec. 11. Definitions.

Sec. 12. Effective date.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) Since 2006, metal theft has been on the rise, largely due to a surge in the global demand for scrap metal and a historic increase in the price of metal commodities.
- (2) Theft of metal components is jeopardizing the integrity of critical infrastructure in the United States through theft of metal in transportation, electrical, and telecommunications networks.
- (3) Theft of manhole covers, storm water grates, highway guard rails, railroad tracks, automobile components, and street lamps pose a significant public safety risk.
- (4) Many State laws call on secondary metal recyclers to help deter this crime and assist law enforcement by documenting transactions and collecting information in order to identify the sellers of scrap metal and the material they are selling. These laws have been a significant deterrent to the problem of metal theft.
- (5) Although many States have enacted metal theft laws, metal theft is a nationwide crime that crosses state lines.
- (6) An overarching Federal law is necessary to deter metal theft across the country.
- (7) Combating the problem of metal theft will require improved communications between metal businesses and law enforcement agencies.
- (8) The secondary metal recycling industry should be commended for educating the public and law enforcement to the problems related to metal theft, issuing 'Do Not Buy' lists, partnering with the National Crime Prevention Council, and creating a Theft Alert System.

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress that Federal, State, and local government agencies should work with representatives of the secondary metal recycling industry to develop and improve effective countermeasures to combat the theft and sale of stolen secondary metal.

SEC. 4. PURPOSES.

The purposes of this Act are--

- (1) to protect consumers, businesses, critical infrastructure, and State and local governments from the problem of secondary metal theft;
- (2) to regulate interstate commerce by limiting trafficking in stolen secondary metal sold for the purpose of recycling or reuse;
- (3) to permit legitimate secondary metal transactions to continue to take place; and
- (4) to establish a system to document secondary metal transactions between sellers and buyers while addressing the growing problem of secondary metal theft.

SEC. 5. PURCHASE TRANSACTION REQUIREMENTS.

(a) Do-Not-Buy List- Unless the seller establishes by written documentation that the seller is the owner, or an employee, agent, or other person authorized to sell on behalf of the owner, it is unlawful for a secondary metal recycling agent to purchase for recycling any secondary metal that is--

- (1) marked with name, logo, or initials of a railroad, an electric, gas, or water company, a telephone company, cable company, or a public utility or that has been altered to remove, conceal, or obliterate such a name, logo, or initials through burning or cutting of wire sheathing or other means;

- (2) marked with the name of a city, county, or State government entity;
- (3) a street light pole or fixture;
- (4) a road or bridge guard rail;
- (5) a highway or street sign;
- (6) a water meter cover;
- (7) a storm water grate;
- (8) unused or undamaged building construction or utility material;
- (9) an historical marker;
- (10) a grave marker or cemetery urn or vase;
- (11) a utility access cover; or
- (12) a bulk container for beer with a capacity of 7.75 gallons or more.

(b) Record Keeping-

(1) IN GENERAL- A secondary metal recycling agent shall maintain a written or electronic record of each secondary metal purchase. The record shall include--

- (A) the agent's name and address;
 - (B) the date of the transaction;
 - (C) a description of the secondary metal purchased, including--
 - (i) a general physical description;
 - (ii) a product description, such as wire, tubing, extrusions, casting, or other kind of product;
- and
- (iii) the weight, quantity, or volume purchased;
 - (D) the amount paid by the agent;
 - (E) the name and address of the person to which the payment was made;
 - (F) the name of the person delivering the secondary metal to the agent, including a distinctive number from a Federal or State government-issued photo identification card and a description of the type of the identification; and
 - (G) the license tag number, State-of-issue, make, and model, if available, of the vehicle used to deliver the secondary metal to the agent.

(2) REPEAT SELLERS- A secondary metal recycling agent may comply with the requirements of paragraph (1) with respect to the second or a subsequent purchase of secondary metal from the same person by--

- (A) reference to the existing record relating to the seller; and
- (B) recording any information for the transaction that is different from the existing record for that person.

(3) RECORD RETENTION PERIOD- A secondary metal recycling agent shall maintain any record required by this subsection for not less than 2 years from the date of the transaction to which the record relates.

(c) Purchases in Excess of \$75-

(1) IN GENERAL- A secondary metal recycling agent may not pay cash for a single purchase of secondary metal in excess of \$75. For purposes of this paragraph, more than 1 purchase in any 48-hour period from the same seller shall be considered to be a single purchase.

(2) PAYMENT METHOD-

(A) OCCASIONAL SELLERS- Except as provided in subparagraph (B), for any purchase of secondary metal in excess of \$75 a secondary metal recycling agent shall make payment by check that--

- (i) is payable to the seller; and

(ii) includes the name and address of the seller.

(B) ESTABLISHED COMMERCIAL TRANSACTIONS- A secondary metal recycling agent may make payments for purchases of secondary metal in excess of \$75 from a governmental or commercial supplier of secondary metal with which the agent has an established commercial relationship by electronic funds transfer or other established commercial transaction payment method through a commercial bank if the agent maintains a written record of such payments that identifies the seller, the amount paid, and the date of the purchase.

(d) Public Notice Requirement- A secondary metal recycling agent shall display, at its principal place of business and at any site at which secondary metal is accepted by or for the agent, a printed notice advising the public that the sale of stolen secondary metal is prohibited under Federal and State laws.

SEC. 6. PROTECTION OF PERSONAL INFORMATION.

(a) In General- A secondary metal recycling agent or the agent, employee, or representative of a secondary metal recycling agent may not disclose the identity of any person from which the agent purchases secondary metal without the consent of the seller except in response to a request from a law enforcement agency or judicial process.

(b) Safeguards- A secondary metal recycling agent shall implement reasonable safeguards--

(1) to protect the security of information required under section 5(b)(1) maintained by that agent; and

(2) to prevent unauthorized access to or disclosure of that information.

(c) Limits on Liability- A secondary metal recycling agency shall not be liable to any seller for a disclosure of information required under section 5(b)(1) if the secondary metal recycling agent has met the requirements of subsection (b) of this section.

SEC. 7. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) In General- Violation of any provision of this Act shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(b) Regulations-

(1) IN GENERAL- The Commission may promulgate such regulations as it finds necessary or appropriate under this Act.

(2) INITIAL GUIDANCE- Within 6 months after the date of enactment of this Act, the Commission shall promulgate a final rule--

(A) setting forth the minimum requirements for the documentation required by section 5(a);

(B) establishing criteria for record retention under section 5(b)(3);

(C) establishing requirements for treatment of a seller as a governmental or commercial supplier with an established commercial relationship under section 5(c)(2)(B);

(D) establishing public notice requirements under section 5(d); and

(E) establishing criteria for safeguards under section 6(b).

SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) In General- A State, as parens patriae, may bring a civil action on behalf of its residents in

an appropriate district court of the United States to enforce the provisions of this Act whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by the violation of this Act or a regulation under this Act by a secondary metal recycling agent doing business in that State.

(b) Notice-

(1) NOTICE REQUIRED- At least 30 days before filing an action under subsection (a), the attorney general of the State involved shall provide to the Federal Trade Commission--

(A) written notice of the action; and

(B) a copy of the complaint for the action.

(2) AUTHORIZATION TO PROCEED- The State may bring the action if it does not receive a request from the Federal Trade Commission, within 30 days after the Commission receives the notice, not to proceed with its action.

(c) Federal Proceedings- After receiving notice under subsection (b), the Commission may--

(1) request that the State not proceed with the action pending the final disposition of a pending Federal proceeding or action;

(2) initiate an action in the appropriate United States district court and move to consolidate all pending actions, including State actions, in such court;

(3) intervene in the action brought under subsection (a); or

(4) file petitions for appeal of a decision in such action.

(c) Pending Federal Proceedings- If the Federal Trade Commission has instituted an enforcement action against a secondary metal recycling agent for a violation of this Act or any regulation under this Act, a State may not bring an action, during the pendency of the Commission's enforcement action, under this section against that secondary metal recycling agent for any violation alleged in the Commission's enforcement action.

(d) Construction- For purposes of bringing any civil action under subsection (a), nothing in this section regarding notification shall be construed to prevent the attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to--

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(e) Venue; Service of Process-

(1) VENUE- Any action brought under subsection (a) may be brought in--

(A) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code; or

(B) another court of competent jurisdiction.

(2) SERVICE OF PROCESS- In an action brought under subsection (a), process may be served in any district in which the defendant--

(A) is an inhabitant; or

(B) may be found.

SEC. 9. CIVIL PENALTY.

The knowing violation of any provision of this Act is punishable by a civil penalty of not to exceed \$10,000.

SEC. 10. STATE AND LOCAL LAW NOT PREEMPTED.

Nothing in this Act preempts any State or local law regulating the sale or purchase of

secondary metal.

SEC. 11. DEFINITIONS.

In this Act:

(1) **SECONDARY METAL**- The term `secondary metal' means--

(A) wire or cable commonly used by communications and electrical utilities; and

(B) copper, aluminum, or other metal (including any metal combined with other materials) that is valuable for recycling or reuse as raw metal.

(2) **SECONDARY METAL RECYCLING AGENT**- The term `secondary metal recycling agent' means any person engaged in the business of purchasing secondary metal for reuse or recycling, without regard to whether that person is engaged in the business of recycling or otherwise processing the purchased secondary metal for reuse.

SEC. 12. EFFECTIVE DATE.

Except as required by section 7(b)(2), this Act shall take effect 6 months after the date of enactment.

